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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

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| JUANA CASTILLO,<br><br>Plaintiff,<br><br>v.<br><br>JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION,<br><br>Defendant. | NO. CV 06-2516-E<br><br>**MEMORANDUM OPINION AND ORDER OF REMAND** |

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS HEREBY ORDERED that Plaintiff's and Defendant's motions for summary judgment are denied and this matter is remanded for further administrative action consistent with this Opinion.

**PROCEEDINGS**

Plaintiff filed a complaint on April 28, 2006, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on

May 19, 2006. Plaintiff filed a motion for summary judgment on November 10, 2006. Defendant filed a cross-motion for summary judgment on December 12, 2006. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed May 3, 2006.

## BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

Plaintiff asserts disability based on alleged physical and mental impairments (Administrative Record ("A.R.") 364-65). An Administrative Law Judge ("ALJ") found plaintiff could work prior to March 8, 2005 (A.R. 16-21). In making this finding, the ALJ assessed Plaintiff's residual functional capacity at a level greater than the level suggested by the opinions of Drs. Haronian and Kim, two of Plaintiff's treating physicians (A.R. 18-21, 160, 345-49). The Appeals Council denied review (A.R. 5-7).

## STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the Commissioner's decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used proper legal standards. See Swanson v. Secretary, 763 F.2d 1061, 1064 (9th Cir. 1985).

## DISCUSSION

A treating physician's conclusions "must be given substantial

weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must give sufficient weight to the subjective aspects of a doctor's opinion . . . This is especially true when the opinion is that of a treating physician") (citation omitted). Even where the treating physician's opinions are contradicted,[1] "if the ALJ wishes to disregard the opinion[s] of the treating physician he . . . must make findings setting forth specific, legitimate reasons for doing so that are based on substantial evidence in the record." Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987) (citation, quotations and brackets omitted); see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the treating physician's opinion, but only by setting forth specific, legitimate reasons for doing so, and this decision must itself be based on substantial evidence") (citation and quotations omitted); McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989) ("broad and vague" reasons for rejecting the treating physician's opinions do not suffice); Embrey v. Bowen, 849 F.2d at 421 ("To say that medical opinions are not supported by sufficient objective findings or are contrary to the preponderant conclusions mandated by the objective findings does not achieve the level of specificity our prior cases have required . . .").

Section 404.1512(e) of 20 C.F.R. provides that the Administration "will seek additional evidence or clarification from your medical source when the report from your medical source contains

[1] Rejection of an uncontradicted opinion of a treating physician requires a statement of "clear and convincing" reasons. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v. Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).

a conflict or ambiguity that must be resolved, the report does not contain all of the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques." See Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996) ("If the ALJ thought he needed to know the basis of Dr. Hoeflich's opinions in order to evaluate them, he had a duty to conduct an appropriate inquiry, for example, by subpoenaing the physicians or submitting further questions to them. He could also have continued the hearing to augment the record") (citations omitted); see also Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983) ("the ALJ has a special duty to fully and fairly develop the record and to assure that the claimant's interests are considered").

In the present, the ALJ rejected Dr. Kim's opinion, at least in part, because of perceived conflicts between the opinion and other information of record (A.R. 18). The ALJ rejected Dr. Haronian's opinion, at least in part, because the ALJ believed "there is no explanation provided for his opinion" (A.R. 19). The ALJ erred by failing to make further inquiry of the treating physicians regarding these perceived conflicts and perceived lack of necessary explanation. See Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996); 20 C.F.R. § 404.1512(e).

In attempting to defend the ALJ's decision, defendant argues that a treating physician such as Dr. Haronian "was not qualified to form an opinion that Plaintiff was disabled" (Defendant's Cross-Motion at 4). Defendant's argument is not well-taken. Although the ultimate issue of disability is reserved to the Administration,

courts "do not draw a distinction between a medical opinion as to a physical condition and a medical opinion on the ultimate issue of disability." See Rodriguez v. Bowen, 876 F.2d 759, 762 n.7 (9th Cir. 1989).

When a court reverses an administrative determination, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." INS v. Ventura, 537 U.S. 12, 16 (2002) (citations and quotations omitted). Remand is proper where, as here, additional administrative proceedings could remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989); see generally Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984).

The Ninth Circuit's decision in Harman v. Apfel, 211 F.3d 1172 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) ("Harman") does not compel a reversal rather than a remand of the present case. In Harman, the Ninth Circuit stated that improperly rejected medical opinion evidence should be credited and an immediate award of benefits directed where "(1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence, (2) there are no outstanding issues that must be resolved before a determination of disability can be made, and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited." Harman at 1178 (citations and quotations omitted). Assuming, arguendo, the Harman holding survives the

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Supreme Court's decision in INS v. Ventura, 537 U.S. 12, 16 (2002),[2] the Harman holding does not direct reversal of the present case. Here, the ALJ must recontact the treating physicians concerning "outstanding issues that must be resolved before a determination of disability can be made." In addition, it is not clear from the record that the ALJ would be required to find Plaintiff disabled for the entire claimed period of disability were the treating physicians' opinions fully credited.

**CONCLUSION**

For all of the foregoing reasons,[3] Plaintiff's and Defendant's motions for summary judgment are denied and this matter is remanded for further administrative action consistent with this Opinion.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: December 22, 2006.

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

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[2] The Ninth Circuit has continued to apply Harman despite INS v. Ventura. See Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004).

[3] The Court has not reached any other issue raised by Plaintiff except insofar as to determine that Plaintiff's arguments in favor of reversal rather than remand are unpersuasive.